



# Petroleum Underground Storage Tank Release Compensation Board

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## MINUTES OF THE 180th MEETING OF THE PETROLEUM UNDERGROUND STORAGE TANK RELEASE COMPENSATION BOARD

June 12, 2019

### BOARD MEMBERS IN ATTENDANCE

Jim Rocco  
John Hull  
Don Bryant  
Tom Stephenson

### EX-OFFICIO MEMBERS IN ATTENDANCE

Verne Ord, representing Director Sheryl Creed Maxfield, Ohio Department of Commerce  
Donna Waggener, representing Director Laurie Stevenson, Ohio Environmental Protection Agency  
Jonathan Azoff, representing Robert Sprague, State Treasurer of Ohio

### OTHERS IN ATTENDANCE

Starr Richmond	Executive Director, PUSTRCB
Madelin Esquivel	Assistant Director, PUSTRCB
Don Leasor	Chief Fiscal Officer, PUSTRCB
Rick Trippel	Claims Supervisor, PUSTRCB
Jonathan Maneval	Executive Assistant, PUSTRCB
Lora Kruse	Administrative Assistant, PUSTRCB
Homayoun Sharifi	Claims Analyst, PUSTRCB
John Hickey	Fiscal Specialist, PUSTRCB
Leigh Bayer	Assistant Attorney General
Michael Lenzo	State Treasurer's Office
Dan Adams	ATC Group Services LLC
Jodi Handlin	BJAAM Environmental, Inc.

Minutes submitted by:

  
Jonathan Maneval  
Executive Assistant

**Call to Order:**

Chairman Rocco convened the one hundred eightieth meeting of the Petroleum Underground Storage Tank Release Compensation Board on Wednesday, June 12, 2019.

The following members were in attendance: Jim Rocco; Don Bryant; John Hull; Tom Stephenson; Verne Ord, representing Director Sheryl Creed Maxfield, Ohio Department of Commerce; Donna Waggener, representing Director Laurie Stevenson, Ohio Environmental Protection Agency; and Jonathan Azoff, representing Robert Sprague, State Treasurer of Ohio.

The following members were not in attendance: Steve Bergman, Robert Cantrell, Mayor Ron Falconi, Scott Fleming, and Stephen Hightower II.

Chairman Rocco congratulated Verne Ord for his appointment as Chief of the Bureau of Underground Storage Tank Regulations.

**Minutes:**

Chairman Rocco asked if there were any comments or questions regarding the minutes from the March 13, 2019 Board meeting and there were none. Mr. Ord moved to approve the minutes. Mr. Bryant seconded. A vote was taken and the following members voted in the affirmative: Ms. Waggoner and Messrs. Rocco, Bryant, Hull, Ord, and Azoff. Mr. Stephenson abstained. The minutes were approved as presented.

**BUSTR Report:**

Chairman Rocco called upon Verne Ord, Bureau Chief, to present the Bureau of Underground Storage Tank Regulations' (BUSTR) report.

Mr. Ord reported that the records management officer, Nancy Caldwell, retired on April 30, 2019, and her replacement, Kelly Snedegar, was hired shortly thereafter. He commented that Ms. Snedegar previously worked in the records management section as an intermittent and temporary employee.

Mr. Ord said as of June 11, 2019, the vendors performing responsible party searches had completed their research of 64 sites. The program is used to identify the parties responsible for the investigation and cleanup of releases from petroleum underground storage tanks (USTs). He said BUSTR is looking at the federal grant to see if money will be available to continue the responsible party search program in the upcoming year.

Mr. Ord stated that [85] BUSTR regulated sites are involved in the Abandoned Gas Station Cleanup Grant Program administered by the Ohio Development Services Agency. He said that 19 properties have been cleaned up and were ready for redevelopment. He noted that a little over \$18 million of the \$30 million allocated for the project had been spent.

Mr. Ord stated that BUSTR had been awarded about \$2 million in LUST (leaking underground storage tank) federal grant monies to operate the environmental side of the program. He said a federal grant

application requesting \$808,000 for the release prevention side of the program had been submitted and he expected it to be approved by the end of the week.

Mr. Ord reported that the Revolving Loan Fund rule amendment was intended to be filed with the Joint Committee on Agency Rule Review (JCARR) with an effective date of July 1, 2019. However, it was determined that the rule was subject to a review and recommendation from the Common Sense Initiative Office (CSI Office). He explained that the rule was submitted to the CSI Office and another extension request will be submitted to JCARR. He said that after the CSI Office completes its review and issues their recommendation, the rule will be filed with JCARR. He said the anticipated effective date of the rule is now [September] 1, 2019. He said the only minor change involves language referencing federal laws.

Mr. Ord reported that, as of June 1, 2019, a total of 214 operational compliance inspections were performed for the three-year inspection cycle. He stated that, as of June 1, 2019, a total of 299 no further actions (NFAs) had been generated and this was about 25% behind the target set by the U.S. Environmental Protection Agency (U.S. EPA). He said that the staff are reviewing the expected number of reports, but the reports are not resulting in NFAs being issued.

Mr. Ord reported that the number of registered tanks is reducing slightly. However, the number of tank owners has increased due to there being more single-station owners. He reported there are around 300 facilities with out-of-service tanks. He said, of these facilities, 75% of the tanks must be removed from the ground because the facilities have been abandoned and they should no longer be operated.

### **Financial Reports:**

Chairman Rocco called upon Don Leasor, Chief Fiscal Officer, to present the financial reports.

#### ***February, March, and April Financials***

Mr. Leasor said the February, March, and April financials were emailed to each member. He asked if there were any questions or concerns regarding these reports and there were none. He said since fiscal year 2019 annualized revenues and expenses would be discussed as part of the operating budget, he would not review the monthly financial reports.

Mr. Leasor stated that the Board recovered just over \$18,000 of refunds which were in the unclaimed funds trust account. He explained that these refund payments were issued to owners but the checks were never cashed. In accordance with Ohio Revised Code 9.39, the funds were placed in the unclaimed funds account and since they remained unclaimed for five years, they were returned to the unobligated account.

#### ***Record Scanning and Document Management System Proposal***

Mr. Leasor called upon Jonathan Maneval, Executive Assistant, to discuss a proposal for a special project.

Mr. Maneval said the project being discussed concerned imaging the Board's records and a content management system. He explained that since the creation of the Board, the agency has operated almost entirely in a paper-based environment with all forms, applications, claims, and reports being mailed to

the office in a paper format with the staff reviewing, processing, filing, and storing the documents in its paper form. He said that over the 30 years a huge amount of paper records has been generated, and the staff began to explore transitioning the office to a digital or paperless environment. He said the intent is to scan the active files that are in house and to also scan all records moving forward.

Mr. Maneval discussed the benefits of having records digitally available, including enhanced productivity resulting from a reduction in time and labor because the staff could quickly and easily search, retrieve, and file the records. He said another benefit would be the ability to share information with the Board's constituents. He noted there would also be reduced risk of loss of information, if there were to be a catastrophic event like a fire or tornado since all the information would be digital, and eventually there may be reduced costs by not having to store physical files.

Mr. Maneval stated that he and Executive Director, Starr Richmond, did a considerable amount of research concerning imaging records and records management software. He said proposals were solicited and numerous meetings were held with a variety of vendors. He explained that after reviewing the proposals, and giving consideration to the pros and cons of each of the platforms, a decision was made to recommend purchasing a content management software known as PaperVision Enterprise and to purchase it through Fireproof Records Center, a local state contract vendor. He said the recommendation is to purchase the server-installed on-premise option rather than a cloud-based alternative since over time the on-premise platform would be more cost effective. He stated that the quote for PaperVision is about \$29,100 for the first year and then ongoing annual license fees for support, software upgrades, and maintenance would be \$3,000. The price quote includes software licenses, an intelligent capture software, a digital forms module, installation and setup fees as well as training for the staff. He said that if the Board agrees that it makes sense to move forward with digitizing the Board's records, then high volume production-level scanning equipment would need to be purchased, and the cost for a scanner is estimated to be about \$4,500. He commented that funding is being requested for two scanners.

Vice-Chairman Hull questioned whether the server-installed option would have the data backed up and stored offline regularly and Mr. Maneval confirmed that the server is backed up at an offsite location nightly. Vice-Chairman Hull commented that the budget is likely underestimated because with technology-related projects such as this, there will be needs that are not yet anticipated, so the budget should be larger than the bare bones of what is being contemplated.

Mr. Ord asked if the Board has records retention and destruction schedules that apply specifically to digital records. Director Richmond explained that the Board has approved records retention schedules, but they do not specifically apply to digital records. She noted that nothing is currently being destroyed due to the ongoing litigation. Mr. Ord commented that once the records retention schedules are updated, the electronic versions become legal documents and the paper records can be destroyed. Chairman Rocco said the staff estimated there to be 2 million pages in the active files and the objective is to take all the active files and digitize them so that they can be accessed electronically and hopefully over time the number of cabinets and boxes in storage will be reduced.

Chairman Rocco said that he would also like to move towards the electronic submission of documents and Mr. Ord commented that BUSTR is now accepting reports electronically. He said reports as large

as 200 – 300 pages can be emailed to them, and they are then uploaded and archived into their system. Chairman Rocco said that once the digital platform is in place, to the extent that a record can be sent digitally it should be encouraged, rather than having to take the paper and then scan it.

Vice-Chairman Hull commented that \$4,500 for a scanner doesn't sound like a large amount and he would recommend upsizing to a more robust model that is probably heavier duty, bigger, and faster. Chairman Rocco recommended talking to staff at other state agencies that are scanning records to learn from their experiences with equipment before making a purchase.

### ***Operating Budget***

Mr. Leasor said the proposed operating budget behind Tab 4 represents the approved budget and actual annualized expenditures for fiscal year 2019 and also presents the recommended budget for fiscal year 2020.

Mr. Leasor reported tank revenue for fiscal year 2019 was budgeted at \$8.45 million, and actual revenues were \$176,000 above the budgeted amount. He recommended tank revenue for fiscal year 2020 be budgeted at \$8.44 million. He said this estimate was built on the assumption that fees will be received for 20,320 tanks, and 27% of these USTs will be assured at the reduced deductible. He noted that fees were invoiced for about 20,800 USTs and historical data indicates fees for 97.5% of these tanks will be paid during the fiscal year. He said tank fee revenue includes property transfer fees, which are projected to be \$90,000 for fiscal year 2020. He said a portion of the transfer fees were assessed during the current fiscal year, but are anticipated to be collected in fiscal year 2020. He stated that collection of prior years' fees, less anticipated fee refunds, are projected to be \$150,000 in fiscal year 2020.

Mr. Leasor stated that interest income was \$130,000 above the budgeted amount for fiscal year 2019 due to the interest rate for STAR Ohio (State Treasury Asset Reserve of Ohio) being higher than anticipated. He explained that the estimate was built using a STAR Ohio interest rate of 2.3%, but the interest rate had risen to 2.51% by the end of May. In addition, certain U.S. Treasuries and U.S. Agency Callable Bonds matured in fiscal year 2019 and the principal was reinvested in securities at higher rates. He said the projected interest income for fiscal year 2020 is \$720,000. He said this anticipated interest income is based on an estimated interest rate of 2.5% in STAR Ohio. He said, of the budgeted amount, \$286,000 is estimated to be earned on the \$15 million invested in U.S. Treasuries and U.S. Agency Callable Bonds and \$434,000 is expected to be generated from funds in STAR Ohio.

Vice-Chairman Hull asked if the federal interest rate cuts being discussed would affect the STAR Ohio rate and questioned whether the budget should be adjusted. Mr. Azoff said that STAR Ohio will likely see a decrease in yield with five to ten basis points rolling off by the end of the year. He noted that the investments that reach maturity will be reinvested at a higher rate and overall there would not be a dramatic difference in terms of the interest income. He commented that he would not anticipate an over performance of \$130,000 seen in this fiscal year, but the difference in performance will not be significant enough to adjust the budget.

Mr. Leasor reported that miscellaneous income totaled \$226. He explained that this income was from payments for printing and copying requests along with cash rebates. He recommended that miscellaneous income be budgeted at \$1,000 for fiscal year 2020.

Mr. Leasor pointed out that actual total income was \$306,000 above the \$8.99 million budgeted for fiscal year 2019.

Mr. Leasor said the claims expense is anticipated to be \$5.6 million for fiscal year 2019. He stated that the proposed budget for the fiscal year 2020 claims expense remains at \$9 million.

Mr. Leasor said the salary line item expense was \$100,000 below the amount budgeted for fiscal year 2019. He explained that \$1,461,000 had been budgeted through the biennial budget process and this amount included funding to hire a 17th staff member, but the position was not filled. He recommended the fiscal year 2020 budget for salaries be set at \$1.41 million. He said this amount reflects the expectation of maintaining parity with public employee union contracts, which provides for a 2.75% pay increase for the staff, and that all 16 current positions remain filled.

Mr. Leasor reported that since all 16 positions were full during the year, no temporary services expenses were incurred in fiscal year 2019. He recommended the 2020 budget for temporary services be \$30,000. He said the amount requested is for a temporary service employee to provide about 1,000 hours of work for the document scanning project.

Mr. Leasor said the actual rent expense for fiscal year 2019 was \$6,000 above the budgeted amount. He said this was due to the timing of payments being issued. He said typically the rent is paid at the end of the month for the subsequent month, but the rent for the month of July was paid in July resulting in 13 months of rent being paid in the fiscal year. He recommended the fiscal year 2020 budget for rent be set at \$155,000. He said the increase over the previous year reflects a potential 4% increase in operating costs. Chairman Rocco asked if it was a contractual increase and Mr. Leasor explained that the lease agreement allows an increase of up to 4%.

Mr. Leasor reported that actual expenses for office supplies were about [\$3,500] below the budgeted amount. He said the amount requested for fiscal year 2020 is \$20,000. He explained that this amount includes monies for standard office supplies, offsite storage, and computing hardware and software with a cost of under \$500. Chairman Rocco asked if there would be any increase in offsite storage costs resulting from the records project and Mr. Leasor responded saying he was confident there was sufficient money budgeted to handle the volume of files to be stored. Vice-Chairman Hull questioned whether the paper documents would need to be stored after being scanned. Director Richmond explained that the records retention schedules will need to be reviewed and perhaps updated to allow for the destruction of the paper files after they are converted to digital records. Chairman Rocco recommended that the proposed updates to the retention schedules be addressed at the September meeting.

Mr. Leasor reported that printing and copying expenses for fiscal year 2019 were \$4,500 below the budgeted amount. He said the recommended budget for fiscal year 2020 remains at \$15,000.

Mr. Leasor said legal and professional actual expenses were below the budgeted amount by \$2,500. He said the amount requested for legal and professional expenses for fiscal year 2020 is \$240,000. He explained that this expense includes the cost for the services of the assistant attorney general, a hearing officer, the annual audit, attorney general and special counsel fees related to the collection of delinquent accounts, database maintenance services, the actuary review for the claims study, and other miscellaneous professional services.

Mr. Leasor reported that traveling expenses were \$1,500 below the budgeted amount. He said the recommended budget for travel expenses for fiscal year 2020 is \$6,000.

Mr. Leasor stated that employee expenses were \$76 above the budgeted amount. He said the recommended budget for employee expense for fiscal year 2020 is \$1,000. He explained that this cost is for providing refreshments at board and committee meetings.

Mr. Leasor said telephone expenses were \$445 above the budgeted amount. He explained that this was due to the timing of payments with 13 months being paid in fiscal year 2019. He said the anticipated telephone expenses for fiscal year 2020 are \$13,000. He noted that this expense includes web access, website hosting, spam/virus filtering, and the VoIP phone system.

Mr. Leasor reported that postage expenses were \$1,500 below the budgeted amount and the recommended budget for postage expenses for fiscal year 2020 is \$30,000.

Mr. Leasor said the depreciation expense was below the budgeted amount by \$3,700 and the anticipated depreciation expense for fiscal year 2020 is [\$32,300]. He said the increase is due to purchases being made this year as well as the anticipated purchase of the document management system, which is part of the capital budget.

Mr. Leasor pointed out that overall operating expenses were about [\$132,000] below the amount budgeted for fiscal year 2019. He stated that the recommended fiscal year 2020 operating expense budget total is \$1,941,900. Chairman Rocco pointed out that the budget amount presented in the notebooks is for \$1,953,000 and Mr. Leasor responded explaining that a change was made and the budget presented in the notebook is the correct amount.

Mr. Leasor reminded members that in the previous year the actuary services of Milliman Inc. were used to develop the liability estimate for the claims for the 219 releases that are being held from processing due to litigation. He said the total estimate of the unpaid claim liability for fiscal year 2018 was \$42.6 million and the estimate that Milliman provided for the held claims accounted for about 52% of that total. He said because the analysis of the held claims is outside the normal scope of the claim liability study, was proposing using Milliman once again to evaluate the held claims. He said that Milliman estimated the fees for the contract to be between \$15,000 and \$20,000, which was less than the previous year since they will be using the model developed last year to evaluate the updated claim data for the current fiscal year.

Vice-Chairman Hull commented that in the past, the Board periodically had an outside party perform the analysis of the claims as an independent benchmarking of the liability estimate and questioned whether the actuary should evaluate all claims and not just the held claims. The Chairman asked when

the actuarial firm was last used to establish the entire liability estimate and Mr. Leasor stated that he believed it was in 2006 or 2007. Director Richmond explained that typically the actuary evaluates the entire liability when the assumptions change. She said the last time they were brought in to evaluate the estimate was after the 2005 BUSTR rule changes.

Chairman Rocco asked if there were other questions regarding the proposed operating budget or the contract with Milliman and there were none. He then requested a motion to approve the operating budget as proposed. Vice-Chairman Hull so moved and Mr. Stephenson seconded. A vote was taken and all were in favor. The motion passed.

Chairman Rocco then requested a motion to authorize the chairman to enter into an agreement with Milliman Inc. to assist the Fund in developing the potential claim liability as of June 30, 2018 in an amount not to exceed \$20,000 plus travel and related fees. Vice-Chairman Hull so moved and Mr. Stephenson seconded. Director Richmond stated the motion should be for the potential claim liability as of June 30, 2019. Vice-Chairman Hull moved to amend the motion to correct the date and Mr. Stephenson seconded. A vote was taken and all were in favor. The amended motion passed.

Chairman Rocco requested a motion to obligate \$9 million for the payment of claims for fiscal year 2020. Vice-Chairman Hull so moved. Mr. Stephenson seconded. A vote was taken and all members voted in favor. The motion passed.

### ***Capital Budget***

Chairman Rocco called upon Mr. Leasor to present the proposed capital budget for fiscal year 2020.

Mr. Leasor said the proposed capital budget behind Tab 5 includes the fiscal year 2018 actual expenditures, the budgeted amounts and annualized expenditures for fiscal year 2019, and the recommended budget for fiscal year 2020.

Mr. Leasor said furniture and equipment was budgeted at \$5,000 for fiscal year 2019 and there were no expenditures for this budget line. He said the recommended furniture and equipment budget for fiscal year 2020 is \$2,500. He said this would be for furniture purchases if needed for a scanning workstation. Vice-Chairman Hull commented that soundproofing the scanning workstations may be needed so the other staff are not disturbed.

Mr. Leasor reported that data processing and electronics were budgeted at \$25,000 for fiscal year 2019, and the actual expenditures for this line item were \$20,128. He said these expenditures included the setup cost of the server that was purchased in the previous year and the purchase of 14 computers to replace staff computers acquired in July 2011 and March 2012 that had fully depreciated. He said \$45,000 is recommended for data processing and electronics for fiscal year 2020. He noted the requested amount includes \$9,000 for scanning equipment and about \$29,000 for the document management system. Chairman Rocco asked if the remaining \$7,000 was budgeted for anything specific and Mr. Leasor said it was extra funding for unanticipated software or electronic needs. Mr. Stephenson commented that he thought it should be more and recommended budgeting \$50,000. The Chairman agreed with increasing the amount for data processing and electronics to \$50,000 noting he



didn't want to be in a position where the scanning project cannot be implemented because of insufficient funding.

Director Richmond commented that soundproofing had not been considered and questioned whether the budget for furniture should also be increased. Vice-Chairman Hull said that sound absorbing panels can be purchased and installing them would be better than having nothing. Chairman Rocco recommended increasing the furniture and equipment budget to \$7,500. He said this would bring the total capital budget to \$57,500. He asked if there were any other questions, comments, or recommended changes and there were none. He then requested a motion to adopt the capital budget as modified. Vice-Chairman Hull so moved and Mr. Stephenson seconded. A vote was taken and all members voted in favor. The motion passed.

### ***Fee Statement Statistics***

Mr. Leasor stated that 2019 program year fee statements were issued on April 26, 2019, and about \$8.36 million was invoiced to 3,254 owners of 20,800 USTs. He commented that this was 22 fewer owners and 29 fewer USTs in comparison to the previous year.

Mr. Leasor said as of June 11, 2019, the per-tank fees collected were approximately \$3.8 million, which represents about 46% of the amount billed. He pointed out that collections for the same period in the previous year were \$3.5 million. He noted that collections to date for the 2019 program year are 109.4% of the fees collected for the same period of time in the prior year.

Mr. Leasor said between the fee statement mailing and June 11, 2019, about \$8.4 million was collected for 2018 program year fees, and \$270,000 was collected for prior years' fees net of refunds paid.

Mr. Leasor reported for the 2019 program year, a total of 15,400 tanks were billed at the standard deductible (\$55,000) per-tank fee and about 5,400 tanks were billed at the reduced deductible (\$11,000) per-tank fee.

Mr. Leasor said as of June 11, 2019, fees had been paid at the standard deductible rate for 6,800 tanks and at the reduced deductible amount for 2,600 tanks. He said, in total, fees had been paid for 9,418 tanks by 1,546 owners. He said this compares to fees being paid for [8,445] tanks by 1,592 owners for the same period of time in the prior year. He noted that in comparison to the previous year, the number of tanks paid increased by about 11.5%, and the number of owners that had paid decreased by 2.9%. He said the increase of the number of tanks paid is due to a few mid-size owners' payments being received earlier than in the previous year.

Mr. Leasor said for the 2018 program year, a total of 3,114 owners have paid fees for 20,373 tanks. He indicated this amount would increase slightly by June 30, 2019, when the 2018 program year ends. He pointed out that 20,320 USTs were budgeted, so the budget was only off by 53 USTs or 0.26%.

Mr. Leasor said the \$3.8 million collected to date represents 45.26% of the \$8,440,000 budgeted for the 2019 program year. He said so far for program year 2019, fees had been received for 9,418 USTs, which is 46.4% of the 20,300 tanks budgeted.

### **Compliance and Fee Assessment Report:**

Chairman Rocco called on Madelin Esquivel, Assistant Director, to present the compliance and fee assessment report.

Ms. Esquivel reported as of May 31, 2019, refunds totaling \$91,205 had been paid to 102 owners for the 2018 program year. She said there are 2,610 pending refunds, totaling \$1,376,921. She said a total of \$36,670 was used to offset unpaid prior years' fees. She said the combined amounts total \$127,875, which represents 57% of the \$225,000 refund goal set for the 2018 program year.

Ms. Esquivel stated that as of May 31, 2019, the total collected by the Attorney General's Office and Special Counsel less the collection costs was \$153,217. She said that no accounts had been certified to the Attorney General's Office for collection since the March meeting.

Ms. Esquivel said there are eight Orders Pursuant to Law currently under appeal and information to support the objection is expected for six appeals. She said information has been received and is under review for the two other appeals. She said that one Determination to Deny a Certificate of Coverage was under appeal. She explained that the Board upheld the denial of the certificate, and it was then appealed to the Court of Common Pleas.

Ms. Esquivel stated that four Ability to Pay Applications are currently pending review. The Ability to Pay program allows former UST owners experiencing financial difficulty to apply for and receive a determination of their ability to pay delinquent fees.

Ms. Esquivel reported that as of June 4, 2019, a total of 3,011 Certificates of Coverage have been issued for program year 2018. She said there are 32 Applications for Certificates of Coverage currently being processed, 19 unresolved Pending Denials, and 100 unresolved Determinations to Deny a Certificate of Coverage.

Ms. Esquivel stated that there are 26 uncashed refund checks totaling \$24,315. She said the decrease from the previous meeting is attributed to the moneys in the unclaimed funds trust account being moved into the unobligated account. She said there are seven owners with pending refunds totaling \$9,590 to whom letters have been sent notifying them that more information is needed before their refunds may be issued. She said there are 37 owners with pending refunds totaling \$70,455 for which information had been requested, but no responses have been received.

Chairman Rocco stated that it appears that the number of determinations denying Certificates of Coverage is increasing. Ms. Esquivel explained that the likely reason that more determinations are being issued is because, beginning in program year 2016, Certificates of Coverage for tanks that are out of service and out of compliance with the Fire Marshal's out-of-service rules are now being denied. She said the purpose of the change is to prompt the tank owners to obtain the required permit and have the out-of-service inspection performed.

### **Claims Reports:**

Chairman Rocco called on Rick Trippel, Claims Supervisor, to present the claims reports.

Mr. Trippel reported that as of June 3, 2019, the total maximum liability of in-house open claims is just under \$33.5 million. He said using the historical average claim payout ratio of 75%, the anticipated liability of unpaid in-house claims is about \$25.1 million; or using the more current claim payout ratio of 82%, the actual anticipated claim liability of unpaid in-house claims is about \$27.5 million. He said currently, a total of 1,635 claims with a total face value above the deductible amount were pending review. He noted that claims received in the month of March 2019 are being reviewed by the staff. He noted that as of June 3, 2019, a total of 12 claim settlement determinations were under appeal. He said that since the March Board meeting, three new claim appeals were received.

Mr. Trippel reported that in the 11 months of program year 2018, a total of 557 claims were received and 400 claims were settled or closed. He stated that the average payout per claim application was \$11,330, which calculates to an average payout ratio of 81.9% of the net value (face value – deductible). He said the average percentage of disallowed costs is 14.9% of the settled face value for program year 2018.

Mr. Trippel said for program year 2018, a total of 81 eligibility applications were received and 56 eligibility determinations were issued. He noted that 35 were approved and 21 were denied. He said that since March 1, 2019, a total of 25 applications were received and 22 eligibility determinations were issued. He said that of these determinations, 11 were approved and the other 11 were denied. He said three were denied because it was determined there was no release, two for no valid Certificate of Coverage at the time of the release, one because the UST system was abandoned or out of compliance, and the remaining five were denied due to no corrective actions being required. He said as of June 3, 2019, a total of 54 eligibility applications are pending review and more information has been requested for five of those applications. He stated that four eligibility determinations are under appeal.

Mr. Trippel reported that as of June 3, 2019, a total of 46 cost pre-approval requests were pending review. He said that during the past three months, 36 cost pre-approval requests were received and 41 cost pre-approval notifications were issued.

### **Rules Committee Report:**

Chairman Rocco stated that the Board's Rules Committee had spent a considerable amount of time reviewing the Board's rules. He said the rules were originally due to be filed with JCARR by July 31, 2019, but an extension was requested and approved. He explained that the reason the extension was requested was to allow for the Finance Committee to meet and make a recommendation of the annual fee and deductible amounts for the upcoming year. He said the plan is for the Finance Committee to meet over the summer and then the proposed rule amendments will be presented at the September Board meeting. He noted that, barring any problems going through the rules process, the rules will likely become effective on April 1, 2020.

Chairman Rocco explained that most of the recommended changes are editorial and the only significant change concerns markup charges. He said that, as a result of the committee's discussions, some additional markups the committee felt were reasonable will be reimbursable. Mr. Stephenson asked whether the Board's rules require the fee notifications be sent by certified mail and the Chairman

clarified that the statute requires it to be sent by certified mail. He commented that if it were not for the statutory requirement, the Board might want to consider an alternative method.

### **New Business:**

#### ***Hearing Officer's Contract Renewal***

Chairman Rocco said the contract for the Board's hearing officer, Howard Silver, was up for renewal. He said Mr. Silver has been the Board's hearing officer since around 1995 and has agreed to extend his contract without changing the hourly rate of \$110 since 2002. Chairman Rocco said that given the great job Mr. Silver has always done, his recommendation is to raise his rate to \$150 an hour. He noted that the contract is written so that the maximum payment per appeal is \$2,500 and if the contract is modified to increase the hourly rate to \$150, then the maximum amount per appeal would need to be increased to reflect the rate increase. Vice-Chairman Hull moved to increase the contract to \$150 an hour. Mr. Stephenson seconded. Vice-Chairman Hull commented that Mr. Silver's services have been highly productive and efficient and it would be beneficial to the Board to keep Mr. Silver's interest as the hearing officer. Chairman Rocco agreed and proposed that the motion be modified to authorize the Chairman to enter into an agreement with Howard Silver for his services with an hourly rate of \$150 and a maximum per appeal amount of \$3,410 for the period of July 1, 2019 through June 30, 2020. Vice-Chairman Hull moved to amend the motion as proposed and Mr. Stephenson seconded. Chairman Rocco asked if there were any questions or further discussion concerning the contract and there were none. A vote was taken and all members were in favor. The motion passed.

#### ***Assistant Attorney General Memorandum of Understanding***

Chairman Rocco said the agreement for the assistant attorney general is also up for renewal. He stated that the proposed contract is different from previous contracts and he is not prepared to sign it because he and Director Richmond have questions concerning it. He explained that, in the past, the contract was for 50% of the assistant attorney general's time and then increased to 75% of the assistant attorney general's time. He said the proposed contract allots 45% of the assistant attorney general's time plus 35% of a legal assistant's time. He said they want to make sure the correct amount of time is being allocated and also want to understand what differences there will be by utilizing the assistant attorney general and the legal assistant. Vice-Chairman Hull conveyed concern that the Board's needs may be moved to a second position of priority if the amount of dedicated time for an assistant attorney general is less than 50%. The Chairman said in the past the Board had almost the full time of an individual and with the proposed changes, he needs some additional clarification to understand how the new arrangement will work. He noted that a contract would need to be executed before the Board's next meeting in September and Vice-Chairman Hull proposed that the Board authorize the chair to negotiate the terms of the agreement. Chairman Rocco said in that case, he needs a motion to authorize the Chairman to negotiate with and enter into an agreement with the Attorney General's Office for continuing legal services in an amount not to exceed \$92,900 for fiscal year 2020. Mr. Bryant so moved and Mr. Ord seconded. Vice-Chairman Hull questioned how the chair arrived at that amount. The Chairman clarified that \$92,900 is the amount in the proposed contract but he is hoping for it to be less. Ms. Waggener asked the amount the current contract was for and Director Richmond stated it is for \$94,365. Mr. Bryant asked if the cost were to exceed the approved amount if the Board would need to approve more money, and Chairman Rocco confirmed that they would have to seek authorization

for more money. He explained that the worst-case is for the contract to be signed as it is right now and the best case would be that it is negotiated for a reduced amount. The Chairman asked if there were any further questions or discussion concerning the contract and there were none. A vote was taken and all members were in favor. The motion passed.

### ***Database Consultant Contract***

Chairman Rocco called upon the Board's Executive Director, Starr Richmond, to discuss the database consultant contract.

Ms. Richmond said the Board's database known as STARRS (Statistical Tank and Reimbursement Records System) has been in operation since 2000 and there is a maintenance contract with the developer of the system for support services. She said the individual will come in periodically to work on reports and make database changes such as updates that were needed after BUSTR changed its rules. She said in the upcoming year the consultant will also be looking to update the database so that imaged records can be accessed from within the database. In addition, he will provide advice on the requirements to migrate the SQL Server 2000 database to something more current. She said the contract is for an amount not to exceed \$15,000.

Vice-Chairman Hull asked whether the \$15,000 was an increase from the prior year and whether that amount covers the cost to interface the scanned documents software program with the database. Ms. Richmond explained that the previous contract was also for \$15,000 and under the agreement, the consultant would only be gathering information to determine the requirements of implementing an interface. Vice-Chairman Hull recommended that the contract amount be increased and Mr. Ord commented that it would likely cost a significant amount of money. Chairman Rocco said rather than guess an amount to budget, he recommended that the consultant provide an estimate for the work and then the Board can authorize an adjustment thereafter. Ms. Richmond commented that if the cost should exceed \$50,000 there would be a requirement to competitively bid the project.

Chairman Rocco asked if there were any other questions or discussion and there was none. He then requested a motion to authorize the Chairman to enter into an agreement with Software Engineering LLC for various updates and fixes to the existing STARRS database in an amount not to exceed \$15,000 for fiscal year 2020. Mr. Ord so moved and Vice-Chairman Hull seconded. A vote was taken and all members were in favor. The motion passed.

### ***Personnel Compensation***

Chairman Rocco stated that as discussed during Mr. Leasor's presentation of the financial reports, the Board's employees are being given a salary increase of 2.75%. He explained that adjustments to the salary of the Board's Executive Director, Starr Richmond, requires Board approval and he requested a motion to approve a 2.75% salary increase for her. Vice-Chairman Hull so moved and Mr. Stephenson seconded. A vote was taken and all members were in favor. The motion passed.

### ***Hardship Applications***

Chairman Rocco called upon Mr. Leasor to present the hardship applications.

Mr. Leasor stated that the Board's rule 3737-1-08 provides for an owner experiencing financial hardship to apply for hardship status with the Fund. He said granting hardship status allows for the acceleration of the review of the claims submitted by the owner. Mr. Leasor noted that granting hardship status does not increase the amount of reimbursement to the tank owner. He stated by accelerating the review of the claim, it reduces the financial burden the owner would experience if the claims were reviewed and settled in the normal course of business. He said, once granted, the hardship status remains in effect for a two-year period and at that time, the owner may reapply for hardship status.

Mr. Leasor stated that, in determining hardship status, the application and a minimum of two years of income tax records are reviewed. He said, in addition, a U.S. EPA financial capacity test is used to evaluate the owner's cash flow and determine if the owner is able to carry debt, in which case, the owner could finance the costs of corrective actions over time.

**Claim # 11387-0001/05/16/91, Owner – Washington & Lee Service Inc.**

Mr. Leasor said Washington & Lee Service Inc. is the responsible party for a 1991 release that was discovered at 2080 Lee Road in Cleveland Heights, Ohio. He noted that Washington & Lee Service Inc. was dissolved in 2007, but as the owner of the corporation, David Saginor is a responsible person and is requesting the Board grant hardship status to him.

Mr. Leasor explained that this is Mr. Saginor's sixth request for hardship status, and to date, the Fund has reimbursed \$587,000. He noted there are currently no unsettled claims in house and the cost of corrective actions for the next year is estimated to be \$247,000.

Mr. Leasor said all underground tanks were removed in June 1991 and the property was sold in October 2006. He said Mr. Saginor provided the financing for the new owner and the new owner makes monthly payments to Mr. Saginor, which totals \$24,000 annually. He added that Mr. Saginor is still responsible for and has continued the corrective actions at the site.

Mr. Leasor reiterated that the estimated cost of corrective actions for the next year is \$247,000 and explained that the U.S. EPA financial capacity test estimates that Mr. Saginor could only afford corrective action costs of just over \$42,200 based on his cash flow and debt capacity. He then recommended the Board approve the application and grant hardship status to Mr. Saginor. Vice-Chairman Hull so moved and Mr. Bryant seconded. A vote was taken and all members voted in the affirmative. The motion passed.

**Claim # 13755-0001/05/24/91, Owner – Raymond Cooper**

Mr. Leasor said that Raymond Cooper is the responsible person for a release that was discovered in 1991 at 111 East Main Street in Lucas, Ohio, and this is his 15th request for hardship status. He said to date, the Fund has reimbursed about \$532,500 for corrective action costs for the release, and the anticipated costs for corrective action activities for the next 12 months are estimated to be \$18,000.

Mr. Leasor explained that Mr. Cooper is retired and no longer owns the property, but he is still responsible for and is continuing the corrective actions. He said that he and his wife have serious health issues, and based on his tax records and the information he provided in the hardship application, his

household income is solely from pension and social security benefits. He said the combined income exceeds his living expenses by about \$7,100 annually.

Mr. Leasor said that based on the U.S. EPA financial capacity test, which is based on cash flows anticipated over a three-year period, Mr. Cooper could only afford corrective action costs of \$13,500 based on his annual retirement income less living expenses. He then recommended the Board approve the application and grant hardship status to Mr. Cooper. Vice-Chairman Hull so moved and Mr. Ord seconded. A vote was taken and all members voted in the affirmative. The motion passed.

**Claim # 22239-0001/08/03/15, Owner – Harjasneet, LLC**

Mr. Leasor said Harjasneet, LLC was granted eligibility for a 2015 release that was discovered at a Gas Depot station at 4871 Dixie Highway in Fairfield, Ohio, when the tanks at the facility were destroyed by lightning. He said, as a partner of the LLC, Harmit Singh is requesting the Board grant hardship status to the LLC.

Mr. Leasor said this is the LLC's fourth request for hardship status and to date, the Fund has reimbursed just under \$303,400 for corrective actions for this release. He noted that currently there are no claims pending review, and the cost of corrective action work expected to be conducted over the next 12 months is estimated to be \$56,500.

Mr. Leasor explained that Harjasneet, LLC (Harjasneet) is the owner of the real estate and Nekleen, LLC (Nekleen) is the operator of the convenience store located on the property. He explained that when performing the U.S. EPA ability to pay analysis, the financial information for both Harjasneet and Nekleen was taken into consideration. He said this was done because both are responsible parties; one as the owner and the other as the operator. In addition, Mr. Singh and Mr. Kaur are both 50% owners of both Harjasneet and Nekleen. He explained that the convenience store is operated as Gas Depot and financial responsibility for the deductible is demonstrated through an insurance policy issued to Harjasneet doing business as Gas Depot. He stated that Nekleen had paid the annual per-tank fees but Nekleen does not pay rent to Harjasneet for use of the real property. He said as of the end of December 2016, Harjasneet had paid off all liabilities of that LLC and the only asset remaining in the LLC is the property, which is valued at \$481,000. He commented that it is therefore not possible that Harjasneet is paying the insurance premium for the financial responsibility mechanism or is funding the corrective actions.

Mr. Leasor said that based on the U.S. EPA Ability to Pay analysis, Harjasneet can afford zero dollars in corrective action costs over the next 12 months. However, based on Nekleen's projected cash flow over the next three years, there is a 99% probability that it can afford the \$56,500 in corrective action costs. He said given the results of the U.S. EPA analysis and that claims are being processed within three months of receipt, the recommendation is for the Board to deny the application. Vice-Chairman Hull moved to deny the application and Mr. Stephenson seconded. A vote was taken and all members voted in the affirmative. The motion passed.

**Claim # 23845-0001/05/20/16, Owner – SDS of Ohio LLC**

Mr. Leasor said that SDS of Ohio LLC is the responsible party for a release that was discovered in 2016 when tanks were removed at 4358 Sunset Boulevard in Steubenville, Ohio. He said as the owner,

Lucy Spence is requesting the Board grand hardship status to the LLC, and this is the first request for hardship status. He said to date, one claim totaling \$9,251 has been received for the release, and the anticipated costs for corrective action activities for the next 12 months are estimated to be \$20,000.

Mr. Leasor explained that SDS of Ohio LLC purchased the property, tanks, and convenience store in April 2016, and removed the tanks in May 2016. He said in December 2016 new tanks were installed by a lessee. He said on her most recent tax forms, Ms. Spence reported receiving \$26,600 from social security, and business income of \$6,700.

Mr. Leasor said that based on the U.S. EPA financial capacity test, SDS of Ohio LLC cannot afford corrective action costs of \$20,000. He then recommended the Board approve the application and grant hardship status to SDS of Ohio LLC. Vice-Chairman Hull so moved and Mr. Ord seconded. A vote was taken and all members voted in the affirmative. The motion passed.

### **Certificates of Coverage – Ratifications:**

Chairman Rocco called upon Ms. Esquivel to present the lists of owners who have either been issued or denied a Certificate of Coverage for ratification by the Board.

Ms. Esquivel said the lists behind Tabs 10, 11, and 12 are listings of facilities that, since the March Board meeting, had been issued or denied a program year 2016, 2017, or 2018 Certificate of Coverage.

Ms. Esquivel said the process used to review the fee applications and issue or deny a Certificate of Coverage includes a review for completeness to determine full payment was received; financial responsibility for the deductible has been demonstrated; and the owner has certified with his signature that he is in compliance with the State Fire Marshal's rules for the operation and maintenance of petroleum underground storage tanks. She said if these requirements are met and if the tanks existed in previous years, a Certificate for the subject tanks has been issued to the owner in at least one of the prior two years, then a Certificate of Coverage is issued.

Ms. Esquivel explained that if deficiencies or compliance issues are identified, notice is provided to the owner in accordance with the Board's rules. The owner is provided 30 days to respond to the notice with information to correct the deficiency or compliance issue. If correcting information is not received within this time, a determination denying the Certificate of Coverage is issued to the owner.

Ms. Esquivel said the Board's rules and the Revised Code make provisions for an appeal of the determination. Ms. Esquivel said that throughout this process, the Board's staff works with the owner to correct the fee statement record and if necessary, refers the owner to BUSTR to correct the registration record.

Ms. Esquivel stated that no 2016 Certificates of Coverage had been issued since the March meeting.

Ms. Esquivel requested the Board ratify the denial of the 2016 program year Certificates of Coverage for the 15 tanks located at the four facilities included on the list behind the Tab 10.



Vice-Chairman Hull moved to ratify the denial of the 2016 Certificates of Coverage for the tanks that were listed. Mr. Bryant seconded. A vote was taken and all members were in favor. The motion passed.

Ms. Esquivel requested the Board ratify the issuance of the 2017 program year Certificates of Coverage for the two owners of 12 facilities included on the list behind Tab 11.

Mr. Bergman moved to ratify the issuance of the 2017 Certificates of Coverage for the facilities listed. Mr. Ord seconded. A vote was taken and all members were in favor. The motion passed.

Ms. Esquivel requested the Board ratify the denial of the 2017 program year Certificates of Coverage for the five tanks located at the two facilities included on the list behind the Tab 11 green divider page.

Vice-Chairman Hull moved to ratify the denial of the 2017 Certificates of Coverage for the tanks that were listed. Mr. Ord seconded. A vote was taken and all members were in favor. The motion passed.

Ms. Esquivel requested the Board ratify the issuance of the 2018 program year Certificates of Coverage for the 105 owners of 311 facilities included on the list behind Tab 12.

Vice-Chairman Hull moved to ratify the issuance of the 2018 Certificates of Coverage for the facilities listed. Mr. Bergman seconded. A vote was taken and all members were in favor. The motion passed.

Ms. Esquivel requested the Board ratify the denial of the 2018 program year Certificates of Coverage for the 284 tanks located at the 96 facilities included on the list behind the Tab 12 green divider page.

Vice-Chairman Hull moved to ratify the denial of the 2018 Certificates of Coverage for the tanks that were listed. Mr. Ord seconded. A vote was taken and all members were in favor. The motion passed.

### **Election of Officers and Committee Member Appointments:**

Chairman Rocco explained that the selection of officers is typically made at the September meeting. However, since the fiscal year ends on June 30th and the Finance Committee needs to conduct a meeting prior to the September meeting, it was necessary to select officers now. He then requested motions from the floor for the nomination of officers for the upcoming year. Mr. Bryant made a motion to re-elect Jim Rocco as the Chairman and John Hull as the Vice-Chairman. Mr. Stephenson seconded. Hearing no other nominations, a vote was taken and all were in favor. Mr. Rocco will remain as Chairman and Mr. Hull will remain as Vice-Chairman.

### ***Rules and Finance Committee Appointments***

Chairman Rocco stated that the Chairman and Vice Chairman serve on both the Finance and Rules Committees. Chairman Rocco then appointed Mr. Stephenson and the designee from the State Treasurer's Office to serve on the Finance Committee. He appointed Messrs. Bergman, Falconi, and Ord to serve on the Rules Committee. He commented that anyone is welcome to participate in the committee meetings.

**Executive Session:**

Chairman Rocco requested a motion to enter into executive session with counsel pursuant to Ohio Revised Code 121.22(G)(3) to discuss matters of pending or imminent court action. Mr. Ord so moved and Vice-Chairman Hull seconded. The Chairman called for a roll call. The following members voted in the affirmative: Ms. Waggener and Messrs. Bryant, Hull, Stephenson, Ord, Azoff, and Rocco. There were no nays. The motion passed.

Chairman Rocco asked if the discussion to be held in executive session concerned matters that he should excuse himself from and Director Richmond confirmed that it did. He recused himself from the executive session and turned the meeting over to Vice-Chairman Hull.

***Reconvene Meeting***

The Board adjourned from executive session and reconvened the public meeting.

**Confirm Next Meeting and Adjourn:**

Chairman Rocco said that a Finance Committee meeting will be scheduled for over the summer and the next Board meeting will be held on Wednesday, September 11, 2019, at 10:00 a.m.

Mr. Ord made a motion to adjourn the meeting and Vice-Chairman Hull seconded. All were in favor.

Note: Numbers in brackets [ ] were incorrectly stated at the meeting. The numbers as written reflect the correct numbers from the report materials provided at the meeting.